

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

BYBEE FARMS LLC; DUANE MUNN &
SONS FARMS LLC; and COLUMBIA
BASIN PELLET LLC,

Plaintiffs,

v.

SNAKE RIVER SUGAR COMPANY; THE
AMALGAMATED SUGAR COMPANY; RALPH
BURTON; and JOHN DOES 1 to 10,

Defendants.

No. CV-06-5007-FVS

ORDER GRANTING STIPULATED
MOTION FOR PROTECTIVE ORDER

The being fully advised, and finding good cause, now therefore;

IT IS HEREBY ORDERED:

1. Any party to this action may designate as "confidential" or "attorney's eyes only" any document or other material or information sought to be discovered or discovered from any party or nonparty pursuant to Rules 26 through 36 and Rule 45 of the Federal Rules of Civil Procedure (either designation hereinafter referred to as "Confidential Material") that the party or its representatives believe in good faith to contain a trade secret or confidential commercial or personal information and to require confidential treatment under this Order. The terms of this Order shall govern as to all aspects of the procedures to be followed in making or challenging such designation, and the terms, conditions, and restrictions on the use of Confidential Material during the pretrial phase of this action. The parties shall

1 meet and confer regarding a procedure for the handling of Confidential
2 Material at trial and set forth the agreed upon procedure in a written
3 stipulation submitted to the Court prior to trial or, if the parties
4 cannot agree upon the procedure, in an order of the Court.

5 2. For purposes of this Order, Confidential Material shall
6 include, to the extent designated confidential in accordance with
7 Paragraphs 4 or 5, *infra*, all or any of the following:

8 (a) documents, interrogatory answers, deposition testimony,
9 and other information or material produced to the parties to this
10 litigation;

11 (b) papers, notes, books, manuals, letters, lists,
12 documents, contracts, copies, extracts, memorandums, reports, studies,
13 drawings, calculations, analysis, projections, sketches, surveys, data
14 compilations, complete or partial summaries, photographs, videos,
15 moving pictures, corporate records of all kind, and other documents or
16 materials made or prepared from Confidential Material; and

17 (c) transcripts, briefs, memoranda, exhibits, and other
18 pleadings or writings that include, summarize, or otherwise disclose
19 any Confidential Material.

20 3. In the event any documents, deposition testimony, or other
21 information or material is obtained from any person not a party to
22 this litigation, such person shall have the same rights as a party
23 would have to designate any such material confidential, and the use of
24 such material by the parties shall be governed in all respects by this
25 Order. The terms "party" and "parties" as used herein shall be deemed
26 to include any such non-parties to the extent necessary or appropriate

1 to effectuate the terms of this paragraph.

2 4. A party wishing to designate material as confidential shall
3 place or cause to be placed upon such material the following legend:

4 **CONFIDENTIAL**
5 **SUBJECT TO PROTECTIVE ORDER**

6 Whenever only a portion of a document, transcript, or other
7 material is deemed confidential, the party claiming confidentiality
8 shall, to the extent reasonably practicable, limit the designation to
9 such portion of the material. However, if it is not reasonably
10 practicable to so limit the designation, the entire document,
11 transcript, or other material may be designated as confidential. With
12 respect to any Confidential Material, such as deposition transcripts,
13 that are not produced under the control of the party claiming
14 confidentiality, the other party shall cooperate to assure that all
15 copies of such material shall bear the above legend to the extent
16 requested by the party claiming confidentiality.

17 5. To the extent that any party or nonparty believes in good
18 faith that any Confidential Material contains highly confidential,
19 sensitive business information requiring additional protection from
20 disclosure, that party or nonparty may designate such documents,
21 information, or things as being highly confidential and subject to
22 this order by placing upon the material the following legend:

23 **CONFIDENTIAL--ATTORNEYS' EYES ONLY**
24 **SUBJECT TO PROTECTIVE ORDER**

25 6. Confidential Material and the contents of Confidential
26 Material (other than material marked "Attorneys' Eyes Only") may be
disclosed by the non-producing party and counsel only as provided

1 herein. Solely for the purposes of the prosecution or defense of this
2 Action, Confidential Material (other than material marked "Attorneys'
3 Eyes Only") may be shown to the following persons:

4 (a) Counsel of record for the parties and persons employed
5 by such counsel;

6 (b) The parties to this action, as reasonably necessary in
7 the preparation of this litigation;

8 (c) The authors, addressees, recipients, or originators of
9 Confidential Material;

10 (d) Experts, witnesses, and consultants to the extent
11 reasonably necessary to prepare the prosecution or defense of
12 this Action; and

13 (e) The Court, provided that any Confidential Material
14 submitted to, or filed with the Court, including, but not
15 necessarily limited to, deposition transcripts, pleadings,
16 briefs, and exhibits, shall be conspicuously marked confidential
17 and shall not be filed with the Clerk except under seal subject
18 to release or inspection only by order of the Court after an in-
19 camera inspection or consent of the party claiming
20 confidentiality as to the particular material.

21 7. Confidential Material marked "Attorneys' Eyes Only" and the
22 contents of such material may be disclosed by the non-producing party
23 and counsel only as provided herein. Solely for the purposes of the
24 prosecution or defense of this Action, Confidential Material marked
25 "Attorneys' Eyes Only" may be disclosed to the following persons:

26 (a) Counsel of record for the parties and persons employed

1 by such counsel;

2 (b) The authors, addresses, recipients, or originators of
3 such Confidential Material;

4 (c) Experts, witnesses, and consultants; and

5 (d) The Court, as provided in paragraph 6(e).

6 8. Prior to any disclosure made pursuant to paragraph 6(a),
7 (b), (c), or (d) or paragraph 7(a), (b), or (c), *supra*, counsel shall
8 require the person to whom such disclosure is to be made to read a
9 copy of this Order and to sign such copy or otherwise signify in
10 writing that he has reviewed and consents to be bound by the terms
11 hereof. Notwithstanding any other provision of this Order, such
12 persons shall treat all Confidential Material as confidential and
13 shall not discuss or disclose such Confidential Material, or the
14 information contained therein, with or to any person except counsel of
15 record, or use such information in any way other than for the
16 prosecution or defense of this action.

17 9. In the event that at any time any party disagrees with the
18 designation of material as confidential or highly confidential under
19 this Order, the parties shall first attempt to resolve the dispute
20 among themselves. If the dispute is not resolved within fifteen (15)
21 days, the party proposing the Confidential Material designation may
22 move the Court for an order maintaining the Confidential Material
23 designation. The designating party will therefore carry the burden of
24 proof in maintaining the Confidential Material designation. During
25 the time a motion is pending, the parties shall continue to treat
26 designated material and information as Confidential Material until the

1 Court issues a final ruling on the document's designation. If the
2 party proposing the Confidential Material designation fails to file a
3 motion within twenty (20) days of when another party gives notice that
4 it disagrees with such designation, then the proposed designation will
5 automatically be deemed removed.

6 10. If Confidential Material is made an exhibit to or the
7 subject of examination during a deposition, or is incorporated into a
8 pleading filed with the Court, arrangements shall be made (a) to bind
9 separately said exhibits, as well as confidential portions of the
10 transcript, or pleading, and (b) to place them in a sealed envelope or
11 other appropriate sealed container on which shall be endorsed the
12 following:

13 **This envelope is sealed pursuant to the Protective**
14 **Order of [date] and contains confidential**
15 **documents filed in this proceeding. It is not to**
16 **be opened or the contents thereof displayed or**
revealed except to persons authorized to inspect
said documents.

17 11. The confidentiality of material produced in this litigation
18 and designated as confidential or highly confidential hereunder is to
19 be preserved both during and after final disposition of this
20 litigation. Within ninety (90) days after the final conclusion or
21 settlement of this action, counsel in the possession of Confidential
22 Material shall, at the option of the producing party, either return or
23 destroy all such material and all copies, notes, tapes, other papers
24 and any other medium containing, summarizing, excerpting or otherwise
25 embodying any such material or its contents; provided, however, that
26 each counsel shall be entitled to retain memoranda or pleadings
embodying information derived from such Confidential Material to the

1 extent reasonably necessary to preserve a file on this litigation,
2 which file shall not be disclosed to any other person. All deposition
3 transcripts and exhibits and any other material returned to the
4 parties or their counsel by the Court which contain Confidential
5 Material shall also be destroyed or returned as set forth above.

6 12. Notwithstanding anything to the contrary set forth herein,
7 each party shall have the right to apply to the Court at any time for
8 an order granting other or additional protective relief with respect
9 to any Confidential Material.

10 13. The placing of any confidentiality designation or a
11 production identification number on the face of a document produced
12 shall have no effect on the authenticity or admissibility of that
13 document at trial.

14 14. In no event shall any Confidential Material obtained through
15 discovery in this litigation be used for any purposes whatsoever other
16 than the preparation of this case for trial or any appellate
17 proceedings in this litigation.

18 15. Nothing in this Order shall preclude any party from
19 complying with a subpoena requesting production of Confidential
20 Material; provided, however, that counsel for the party that produced
21 the confidential document shall be given notice of such a subpoena
22 within seven (7) court days of receipt thereof by the subpoenaed party
23 and at least seven (7) court days prior to production of any
24 confidential documents pursuant to such a subpoena. If the producing
25 party files a motion for protective order, then the subpoenaed party
26 will await a court ruling on the motion before producing the

1 subpoenaed documents, unless otherwise ordered by a court.

2 16. The restrictions on the use of Confidential Material
3 established pursuant to this Order do not apply to the party, person,
4 or entity producing such material.

5 17. The inadvertent production of any confidential, privileged
6 or otherwise protected materials shall not be deemed a waiver or
7 impairment of any claim of confidentiality, privilege or protection,
8 including, but not limited to, the attorney-client privilege and the
9 protection afforded to work-product materials, or the subject matter
10 thereof. Upon receiving notice from a party that materials have been
11 inadvertently produced, all such materials (including all copies)
12 shall be returned to the producing party within five (5) business days
13 of receipt of such notice. In the alternative, the producing party
14 has the right to designate such materials as confidential within the
15 meaning of paragraph four (4), supra, or paragraph five (5), supra,
16 within fifteen (15) days after discovering such inadvertent
17 disclosure.

18 18. The terms of this Order shall survive and remain in full
19 force and effect after the termination of this litigation.

20 **IT IS HEREBY ORDERED** that the parties Stipulated Motion for
21 Protective Order (**Ct. Rec. 20**) is **GRANTED**.

22 **IT IS SO ORDERED.** The District Court Executive is hereby
23 directed to enter this order and furnish copies to counsel.

24 **DATED** this 24th day of July, 2006.

25 s/ Fred Van Sickle

26 Fred Van Sickle
United States District Judge